

CHAPTER 8 INVESTIGATIONS AND DISCIPLINARY PROCEDURES

193F—8.1(272C,543D) Disciplinary action. The Iowa real estate appraiser examining board has authority in Iowa Code chapter 543D entitled “Real Estate Appraisals and Appraisers” and chapter 17A and chapter 272C to impose discipline for violations of these chapters and the rules promulgated thereunder.

193F—8.2(543D) Investigation of complaints. The board shall, upon receipt of a complaint in writing, or may upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the chairperson shall cause an investigation to be made into the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board shall take no further action.

193F—8.3(543D) Peer investigative committee. A peer investigative committee may be appointed by the chairperson to investigate a complaint. The committee will consist of two certified or licensed real property appraisers registered to practice in Iowa and residing in Iowa. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner. The board may contract with the department of inspections and appeals to conduct an investigation in addition to or in lieu of the peer investigative committee.

193F—8.4(543D) Investigation report. Upon completion of the investigation, a report containing the position or defense of the registrant shall be prepared by the investigator(s) for the board’s consideration to determine what further action is necessary. The board may:

1. Order the matter be further investigated;
2. Allow the registrant who is the subject of the complaint an opportunity to appear before the board for an informal discussion regarding the circumstances of the alleged violation;
3. Determine there is no probable cause to believe a disciplinary violation has occurred, and close the case;
4. Determine there is probable cause to believe that a disciplinary violation has occurred.

193F—8.5(543D) Informal discussion. The board, if it considers it advisable, or if requested by the affected registrant, may grant the registrant an opportunity to appear before the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. An informal discussion constitutes a part of the board’s investigation of a pending disciplinary case and the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

193F—8.6(543D) Consent order. The board may negotiate a settlement and enter into a consent order with an appraiser who acknowledges a violation of the statute or rules and agrees to refrain from any further violation, pursuant to Iowa Code section 543D.17. A representative of the board, designated by the chairperson, and a designated staff person or an assistant attorney general may agree to negotiate a settlement. The proposed consent order must be presented to the board for approval and shall be binding if signed by the board chairperson and the respondent. Any board member who participates in negotiation of a consent order is not disqualified from participating in adjudication of the con-

tested case. Consent to negotiation by the respondent constitutes waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during settlement negotiations. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or designee.

193F—8.7(543D) Consent agreement. The board, in its discretion and in lieu of prosecuting a first offense of any of the offenses described in Iowa Code section 543D.17, may enter into a consent agreement with a violator which acknowledges the violation and the violator's agreement to refrain from any further violations. A representative of the board, designated by the chairperson, and a designated staff person or an assistant attorney general may agree to negotiate a consent agreement. The proposed consent agreement must be presented to the board for approval and shall be binding if signed by the board chairperson and the violator. Failure to abide by the agreement is grounds for prosecution.

193F—8.8(543D) Statement of charges. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated, and shall be in sufficient detail to enable the preparation of the respondent's defense.

193F—8.9(543D) Notice of hearing. The board's notice of hearing shall fix the time and place for hearing and shall contain those items in Iowa Code section 17A.12(2). The notice shall also contain a statement requiring the respondent to submit an answer of the type specified in 8.10(543D) within 20 days after receipt of the notice of hearing. A written notice of hearing, together with a statement of the charges, shall be mailed to the registrant by certified mail, return receipt requested, at least 30 days before the hearing.

8.9(1) Prehearing conference. A prehearing conference shall be conducted by an assistant attorney general or administrative law judge for the purpose of facilitating and expediting the formal hearing, and it shall be attended by the state's counsel and counsel for the respondent or the respondent pro se. At the conference, the state's counsel and the respondent or counsel shall present each other with a copy of each exhibit which is intended to be offered as evidence at the formal hearing, and these exhibits shall be marked for identification. Objections to the foundation of any such exhibit shall be filed in writing with the board no less than five days before the formal hearing, and in the event none are filed, all objection to foundation shall be deemed waived. The exchange of documentary evidence need not include rebuttal or impeachment exhibits.

8.9(2) Prehearing stipulation. At the time of the prehearing conference, the state's counsel and the respondent or counsel shall submit to the attorney general's representative or administrative law judge a prehearing stipulation, which shall contain:

- a. A concise statement of the circumstance giving rise to the formal complaint.
- b. A statement of the undisputed facts.
- c. A statement of the facts alleged, which are not conceded but which will not be disputed by proof at the formal hearing.
- d. A concise statement of each legal and factual issue.
- e. A list of witnesses who will be called by the respective parties, excluding, however, rebuttal or impeachment witnesses.
- f. The estimated time necessary for completion of the formal hearing.

193F—8.10(543D) Form of answer. The answer shall contain the following information:

1. The name, address and telephone number of the respondent.
2. Specific statement regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statement of mitigating circumstances.
3. Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

193F—8.11(543D) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case, but shall represent the public interest.

193F—8.12(543D) Hearings. A hearing may be conducted before a majority of the board members. An administrative law judge may act as presiding officer to conduct the hearing for the board. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and shall rule on all motions and objections.

8.12(1) Examination of witnesses by the board. The presiding officer and other board members have the right to conduct direct examination of the witnesses at any stage of that witness's testimony.

8.12(2) Public hearing. The hearing shall be open to the public unless the registrant or registrant's attorney requests in writing that the hearing be closed to the public.

8.12(3) Record of proceedings. Oral proceedings shall be recorded either by mechanical or electrical means, or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the board for at least five years from the date of decision.

8.12(4) Subpoena powers. In connection with the investigation of a complaint, the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (disciplinary hearing). After service of the notice of hearing under 8.9(543D) of these rules, the following procedures are available to the parties in order to obtain relevant and material evidence:

a. Board subpoenas for books, papers, records, and other real evidence will be issued to a party upon request. Subpoenas for witnesses may also be obtained. The executive secretary shall issue all subpoenas for both parties upon request. The request, which may be verbal or written, must specify the documents sought to be obtained and the names of the witnesses whose testimony is sought.

b. Following the filing of the order and notices of hearing, discovery procedures applicable to civil actions are available to the parties in a proceeding under these rules.

c. In the event of a refusal to obey a subpoena, either party or the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena; and if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

8.12(5) Failure of respondent to appear. If a respondent, upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the board and presiding officer may proceed to conduct the hearing and the respondent shall be bound by the results of such hearing to the same extent as if the registrant were present.

8.12(6) Order of proceedings. Before testimony is presented, the record shall show the identity of any board members present, identity of the presiding officer, identity of the primary parties and their representatives, and of the fact that all testimony is being recorded. Hearings before the board shall generally be conducted in the following order, subject to modification at the discretion of the board.

a. The presiding officer may read a summary of the charges and answers thereto, and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state interest before the board shall make a brief opening statement which will include a summary of charges and the witnesses and documents to support such charges.

c. The respondent(s) shall each be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentations of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state, including a summary at the close of the evidence on behalf of the state.

- e.* The presentation of evidence on behalf of the respondent(s).
- f.* Rebuttal evidence on behalf of the state, if any.
- g.* Rebuttal evidence on behalf of the respondent(s), if any.
- h.* Closing arguments, first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

8.12(7) Immunity. The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

8.12(8) Evidence. Admissibility of evidence at the hearing shall be governed by Iowa Code section 17A.14. Copies of documents offered as evidence at the hearing shall be provided to opposing parties. Copies may also be furnished to members of the board.

8.12(9) Final decision. When four or more members of the board preside over the reception of evidence at the hearing, the decision is a final decision.

193F—8.13(543D) Dispensation. The board shall make findings of fact, conclusions of law, and may take one or more of the following actions:

1. Dismiss the charges.
2. Suspend the registrant's registration as authorized by law.
3. Impose civil penalties, the amount which shall be set at the discretion of the board, but which shall not exceed \$1000. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code section 543D.17 or for any repeat offenses.
4. Impose a period of probation, either with or without conditions.
5. Require reexamination.
6. Require additional professional education, reeducation, or continuing education.
7. Issue a citation and a warning.
8. Issue a consent order.

193F—8.14(543D) Motion for rehearing. Within 20 days after issuance of a final decision, any party may file an application for a rehearing. The application shall state the specific grounds for rehearing and the relief sought. The application shall be deemed denied if not granted within 20 days after service on the executive secretary.

8.14(1) Upon a rehearing, the board shall consider facts not presented in the original proceeding if:

- a.* Such facts arose after the original proceeding was concluded; or
- b.* The party offering such evidence could not reasonably have provided such evidence at the original proceeding; or
- c.* The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

8.14(2) The decision made upon a rehearing may incorporate by reference any and all parts of the decision made upon the conclusion of the original proceeding.

193F—8.15(543D) Final decision—filed with executive secretary. The final decision of the board shall be filed with the executive secretary. A copy of the decision and order shall immediately be sent by certified mail, return receipt requested, to the registrant's last known post office address or may be served as in the manner of original notices upon the registrant.

193F—8.16(543D) Ex parte communications. Ex parte communications and other matters tending to prejudice a contested hearing proceeding are prohibited by Iowa Code section 17A.17. In keeping with this provision, the following minimal requirements are applicable:

1. Neither the prosecuting authority nor the respondent may communicate ex parte with the board members concerning an issue under consideration in the hearing.

2. Individuals assigned to render a proposed or final decision, to make findings of fact or conclusions of law, shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any person or party, except upon notice and opportunity for all parties to participate. Such individuals may, however, communicate with members of the board and its executive secretary and may have the aid and advice of persons other than those with a personal interest in, or those engaged in prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties.

3. In any case, where it becomes necessary to communicate with a party on matters noted above, notice shall be given to all parties and a date, time and place set for a discussion of the matter.

193F—8.17(543D) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

193F—8.18(543D) Application for reinstatement. Any person whose registration has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension.

If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the registration was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of voluntary surrender.

193F—8.19(543D) Publication of decisions. Final decisions of the board relating to disciplinary actions, including consent agreements and consent orders, may be transmitted to the appropriate professional association(s), other states, and news media.

193F—8.20(543D) Registration denial. Any request to have a hearing before the board concerning the denial of a license shall be submitted by the applicant in writing to the executive secretary by certified mail, return receipt requested, within 30 days of the mailing of a notice of denial of registration.

These rules are intended to implement Iowa Code chapter 543D.

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